

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ALL BRITE CLEANING AND RESTORATION, INC.
SURGE

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid guaranteed commission

Employer: All Brite Cleaning and Restoration, Inc. 41 Country Club Rd
Gilford, NH 03249

Surge, 920 Candia Rd, Manchester, NH 03109

Date of Hearing: August 4, 2015

Case No. 50259

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on March 25, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on July 17, 2015.

There was an issue of wages for the last day of work and some employee expenses that were settled by the parties prior to the hearing.

The issue for this hearing deals with a guaranteed monthly commission of \$500.00 and a guaranteed monthly car allowance of \$400.00. The claimant testified that he started to work for the employer on September 8, 2014. The claimant testified that he did receive his monthly guarantee for the full month of September. Although there were many requests for the payment of the monthly guarantees, he did receive them through November of 2014.

The claimant left his employment on December 16, 2014. He has not been paid the monthly guarantee for the month of December and he feels that this guarantee is due to him. The claimant further testified that there is no signed hiring agreement, no agreement on the

monthly guarantees and no written policy that states an employee is paid for guarantees after the employee leaves the company.

The employer provided testimony that the claimant was recruited by a company called Benchmark. The claimant was recruited to work for All Brite Cleaning and Restoration, Inc. The recruitment letter spelled out the guaranteed commissions and the auto allowance. In month four the commission dropped to \$500.00 and the auto allowance remained at \$400.00 per month. The hiring letter was not signed.

The employer testified that they were contracted to Surge for their salary payments and benefit package. Surge provided testimony that the monthly guaranteed payments were based on an anniversary month and not a calendar month. The claimant was only one week into the monthly reporting period. The employer maintains that the claimant did not work a full reporting month in December of 2014 so the guaranteed payments were not due.

The employer maintains that all work was paid and all guaranteed commissions and auto reimbursement were paid when due.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing. The guaranteed commissions and expenses would fall under the provisions of this section of the law.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that there is a valid Wage Claim. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant provided credible testimony that he was paid according to the provisions of the written hiring letter. Although the letter was not signed the employer paid in accordance with the intent of the letter. The claimant was credible in his testimony that he was paid on a calendar month and not an anniversary month. He was even paid if he took time off during the month as far as the guaranteed commission and auto expenses were concerned. The claimant testified credibly that he was paid by the month for the month even if he took time off.

The employer stated that there were no signed written documents that spelled out the benefit plan. However, the employer could not produce any written documents that clarified that meaning of the month as a period of time. The employer also did not provide any written policy that stated there was no payment of benefits after employment ceases.

A review of the Wage Claim shows that the guaranteed commissions were for a set period of time and that the auto allowance was monthly for the employee's use of their vehicle. It is clear to the Hearing Officer that the guarantees were for a period of time that the employer had to adjust to the details of the job and selling the services. The auto guarantee was to offset expenses suffered on behalf of the employer.

The Hearing Officer finds that the guaranteed commission structure and the guaranteed auto allowance were valid into the month of December. However the guarantees were to offset work performed and expenses incurred. The claimant did not show that the entire amount was due and owing. The Wage Claim is valid in the amount of \$450.00. This represents one half of the Wage Claim for one half of the month of December.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$450.00. \$250.00 for guaranteed commissions and \$200.00 for the guaranteed auto allowance.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$450.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 24, 2015

TFH/kdc